2017 SKQB 82, 2017 CarswellSask 141

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Saskatchewan Court of Queen's Bench

Ehman v. Albony Place Condominium Corp.

2017 CarswellSask 141, 2017 SKQB 82

# DIANNE EHMAN AND SHARON WOOD (APPLICANTS) and ALBONY PLACE CONDOMINIUM CORPORATION AND NICOR COMMUNITY MANAGEMENT INC. (RESPONDENTS)

R.W. Elson J.

Judgment: March 22, 2017
Docket: Regina QBG 1127/16

Counsel: Jyoti Haeusler, for Applicants
Courtney Keith, for Respondents

Subject: Property

***R.W. Elson J.*:**

## INTRODUCTION

1 In this application, the applicants, owners of units within a condominium property, seek an order prohibiting their condominium corporation from amending its bylaws to change the apportionment scheme for the collection of contributions to the common expenses of the corporation. The bylaw amendment contemplates a change from the default scheme of apportionment, based on unit factor, to one in which certain expenses are apportioned by unit factor and other expenses are apportioned equally between units, irrespective of unit factor. The application is defended by the management company for the condominium corporation.

2 The applicants assert that the means by which the bylaw amendment was approved offends the applicable statute and its regulations.

3 As it turned out, this application was considerably more complex and involved than either counsel or I had originally thought. The complexity was increased by the lack of case law to afford guidance. As shown in the analysis that follows, I am satisfied that the applicants have established their case, but not entirely on the basis of the argument presented.

## APPLICABLE LEGISLATION

4 In the circumstances of this case, I depart from my usual practice of describing the facts of the case before identifying the applicable law. In my view, this case lends itself to a different approach. Accordingly, I will begin by reviewing the law that applies to the case, as I see it.

5 Condominium law, and the general nature of condominium property, is very much a creature of legislation. The formation, creation and operation of condominium properties in Saskatchewan are principally governed by *The Condominium Property Act, 1993*, SS 1993, c C-26.1 [*Act*]. Its associated regulations are *The Condominium Property Regulations, 2001*, RRS c C-26.1 Reg 2 (effective June 25, 2001) [*Regulations*]. In my self-education on the subject, I find that certain of the relevant concepts leap freely, back and forth, between the *Act* and the *Regulations*. As a consequence, it is advisable to identify and address the relevant provisions of both the primary and delegated legislation.

 

6 In the specific context of this application, I think it particularly advisable to set out the relevant provisions in specific groupings. These groupings are: 1) the relevant definitions in s. 2 of the *Act*; 2) the relevant provisions pertaining to the voting rights of owners; 3) the relevant provisions pertaining to the assessment of fees for contributions to the common expenses fund of a condominium corporation; and 4) the relevant *Regulations*.

***1. Definition Provisions***

7 There are a number of terms that are specifically defined in the interpretation provision of the *Act*, s. 2. Several of these terms are engaged directly or indirectly by this application. The relevant definitions in this regard are as follows:

> **2**(1) In this Act:
>
> . . .
>
> (f) **"common expenses fund"** means a common expenses fund established pursuant to clause 55(1)(a);
>
> . . .
>
> (i) **"condominium"** means the land included in a condominium plan together with the buildings and units and the common property and common facilities belonging to them;
>
> (j) **"condominium plan"** means a plan that:
>
> (i) is described in the heading of the plan as a condominium plan;
>
> (ii) shows the whole or any part of the buildings and land included in the plan as being divided into two or more units; and
>
> (iii) meets the requirements of section 9;
>
> . . .
>
> (r) **"owner"** means the registered owner of a title and includes persons prescribed in the regulations for prescribed purposes;
>
> (s) **"parcel"** means all the land included in a condominium plan;
>
> . . .
>
> (t) **"prescribed"** means prescribed in the regulations;
>
> . . .
>
> (z) **"special resolution"** means:
>
> (i) a resolution that is approved by a majority of not less than two-thirds of the persons entitled to exercise the powers of voting conferred by this Act or the bylaws of the corporation:
>
> (A) at a properly convened meeting of a corporation by persons who:
>
> (I) are present personally or who cast their votes by proxy; and
>
> (II) vote with respect to that resolution; and

  

(B) by the signature on the resolution of persons who are not present personally or who do not cast their votes by proxy at the meeting; or

(ii) a resolution that is approved by the signature on the resolution of a majority of not less than two-thirds of the persons entitled to exercise the powers of voting conferred by this Act or the bylaws of the corporation;

. . .

(z.1) **"title"** means, respecting a condominium unit, the right to:

(i) an ownership share in the condominium unit; and

(ii) a share in the common property;

. . .

(bb) **"unit"** means:

(0.i) a parking unit;

(0.ii) a services unit;

(0.iii) a conversion unit;

(i) in the case of a building, a space that is situated within the building and described as a unit in a condominium plan by reference to floors, walls or ceilings or other monuments as defined in *The Land Surveys Act, 2000* within the building; and

(ii) in any other case, land that is situated within a parcel and described as a unit in a condominium plan by reference to boundaries governed by monuments placed pursuant to the provisions of *The Land Surveys Act, 2000* and the regulations made pursuant to that Act respecting subdivision surveys;

(cc) **"unit factor"** means the unit factor for a unit as specified in the unit factor schedule described in clause 9(1)(e) or apportioned in accordance with subsection 25(3), as the case may be.

(Emphasis added)

8 For the most part, the above definitions are self-explanatory. Even so, there are certain observations that deserve mention. To begin with, and contrary to what may be understood from common parlance, s. 2(1)(i), makes it clear that the term "condominium" does not specifically describe a particular type of building, or a particular unit within a building. It is a more conceptual term that describes the means by which individuals hold title to particular units of property and, concurrently, share ownership of the common features of the property that necessarily appertains to the units.

9 The second observation relates to the concept of "unit factor". As defined in s. 2(1)(cc), each unit is accorded a unit factor. Section 9 of the *Act* (not recited in this judgment) stipulates that, before the registrar can approve a condominium plan, the developer must attach a unit factor schedule to the proposed plan. The schedule must specify, in whole numbers, the unit factor for each unit in the parcel. As evident in this case, a particular unit factor can determine certain ownership rights, including the assessment of condominium fees as well as voting rights within the condominium corporation.

***2. Voting Rights of Owners***

  

10 Part III of the *Act* sets out the governance of condominium corporations, including the voting rights of owners as well as the creation and amendment of a condominium corporation's bylaws. The relevant provisions in this respect are as follows:

> **41**(1) Subject to subsections (2) and (5) to (12), each owner has a number of votes that bears the same proportion to the total number of votes as the owner's unit factor bears to the total of the unit factors.
>
> (2) Subject to the right of any owner to ask for a vote by unit factors in person or by proxy, the bylaws of a corporation may provide for voting by show of hands for specified purposes.
>
> (3) Unless otherwise provided in this Act, all questions proposed for the consideration of the owners at a meeting of owners shall be determined by a majority of the votes cast,
>
> . . .
>
> **45** On and from the issuance of titles pursuant to a condominium plan, the bylaws prescribed in the regulations are in force for all purposes in relation to the parcel, the units and common property included in the condominium plan until bylaws are made by the corporation.
>
> **46**(0.1) This section does not apply to bylaws of a corporation made pursuant to clause 47(1)(m.1).
>
> (1) Where a corporation wishes to exercise a power to make bylaws conferred by this Act, the corporation shall do so by special resolution.
>
> (2) A corporation may amend or repeal a bylaw, whether an initial bylaw prescribed in the regulations or a bylaw enacted by the board, only by special resolution.
>
> (3) An amendment to or a repeal of any bylaw has no effect until the corporation files a copy of the amendment or repeal with the Director in the prescribed manner.
>
> **47**(1) Subject to the regulations, a corporation may pass bylaws:
>
> . . .
>
> (c) governing the manner of conducting a vote;
>
> . . .
>
> (i) governing the assessment and collection of contributions towards the common expenses;
>
> [Emphasis Added]

11 Again, these provisions largely speak for themselves. That said, there are two observations that should be mentioned. The first relates to the requirement, in s. 46(2), that amendment or repeal of bylaws can be effected only by special resolution. The definition of a special resolution appears in s. 2(1)(z) of the *Act*. The second observation is that s. 47(1)(i) recognizes that the assessment and collection of contributions toward common expenses is a proper subject matter for inclusion in the bylaws of a condominium corporation.

***3. Condominium Fees***

12 Part IV of the *Act* pertains to a condominium corporation's authority to establish a common expenses fund as well as one or more reserve funds, and to seek contribution to those funds in the form of condominium fees. In the present case, no evidence was presented of a reserve fund. As such, the issue relates to contributions, in the form of condominium

  

fees, to the common expenses fund. As set out in s. 55(1)(a), a condominium corporation is obliged to establish a common expenses fund. In the context of this application, the relevant provisions of Part IV of the *Act* are as follows:

> **56**(1) The corporation shall levy on the owners of the units condominium fees consisting of:
>
> (a) contributions to the common expenses fund in amounts determined in accordance with section 57; and
>
> (b) contributions to the reserve fund in amounts determined in accordance with section 58.
>
> (2) A developer who owns one or more units is deemed to be the owner of those units for the purposes of subsection (1).
>
> **57**(1) The corporation shall, from time to time:
>
> (a) determine the amounts required for the common expenses fund for the purposes set out in subsection 55(2); and
>
> (b) determine the amounts of the owners' contributions by apportioning the amounts mentioned in clause (a) among the owners in accordance with the prescribed procedure.
>
> [Emphasis Added]
>
> (2) A fee levied pursuant to clause 56(1)(a):
>
> (a) is due and payable on the passing by the corporation of a resolution levying that fee and in accordance with the terms of that resolution; and
>
> (b) may be recovered by the corporation by an action for debt from the person who was the proper owner when the default occurred and when:
>
> (i) the resolution was passed; or
>
> (ii) the action was instituted.

***4. Regulations***

13 Section 112 at the *Act* sets out the authority of the Lieutenant Governor in Council to make regulations for a wide variety of subjects pertaining to the operation of the *Act*. The relevant clauses of s. 112 read as follows:

> **112** For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:
>
> (a) defining, enlarging or restricting the meaning of any word or phrase used in this Act but not defined in this Act;
>
> (b) for the purposes of clause 2(1)(r), prescribing persons or classes of persons to be owners;
>
> . . .
>
> (e.01) for the purposes of subsection 11(7), prescribing the manner in which a parking space may become a parking unit;
>
> . . .
>
> (j) for the purposes of section 45, prescribing bylaws to regulate corporations;

  

(j.1) respecting the bylaw-making powers of a corporation;

(j.11) respecting the approval processes required to create, amend or repeal bylaws governing certain matters;

. . .

(k) for the purposes of clause 57(1)(b), prescribing a procedure for apportioning the amounts required for a common expenses fund among owners of units;

[Emphasis Added]

14 The relevant provisions of the *Regulations*, made pursuant to the authority in s. 112, are ss. 47, 48 and 49, which read as follows:

**47** For the purposes of sections 57 and 58 of the Act, the corporation shall raise the amounts required for the common expenses fund or the reserve fund by levying contributions on the owners of the units:

(a) in proportion to the unit factors of their respective units; or

(b) if a scheme of apportionment for contributions to the fund has been established pursuant to sections 48 and 49, in accordance with that scheme.

**48**(1) Subject to subsection (2), a corporation may establish a scheme of apportionment for owners' contributions to the common expenses fund or a reserve fund that is not in proportion to the unit factors by amending the bylaws of the corporation to include that scheme of apportionment and by filing those bylaws with the Director.

(2) A corporation shall not amend its bylaws to include a scheme of apportionment unless written consent to that scheme has been obtained from at least 75% of the owners.

(3) Not less than 30 days before filing with the Director an amendment to the bylaws that includes a scheme of apportionment, the corporation shall serve a copy of that amendment to the bylaws and notice, pursuant to section 50, of the right to apply to the court on:

(a) all owners of units except those owners of units who have consented pursuant to subsection (2);

(b) all holders of registered interests based on mortgages of units that have given written notice of their mortgages to the corporation pursuant to subsection 42(2) of the Act; and

(c) the Saskatchewan Housing Corporation, if it has given notice to the corporation pursuant to subsection (5).

(4) At the time of filing with the Director an amendment to the bylaws that includes a scheme of apportionment mentioned in subsection (1), the corporation shall also retain for its records a certificate of the corporation under seal stating that:

(a) copies of the amendment to the bylaws have been served as required by subsection (3); and

(b) the consents required pursuant to subsection (2) have been obtained.

(5) Where the Saskatchewan Housing Corporation has a contract with the owner of a unit entered into pursuant to *The Saskatchewan Housing Corporation Act* to subsidize the common expenses fund or reserve fund contributions payable by the owner:

(a) it may give written notice of the contract to the corporation; and

  

(b) if it does give written notice to the corporation pursuant to this section, it shall give written notice to the corporation on the expiration or termination of the contract or if it ceases to subsidize the common expenses fund or reserve fund contributions payable by the owner.

(6) If a scheme of apportionment has been established pursuant to this section, it may be repealed, amended or replaced only in accordance with this section.

(7) The amendment to the bylaws pursuant to this section becomes effective on the filing with the Director of the amendment to the bylaws or a certified copy of a court order made pursuant to section 50.

(8) For the purposes of subsection (3), a copy of an amendment and notice may be served:

(a) personally; or

(b) by registered mail sent to:

(i) the owner at the address shown for the title to the unit at the land titles registry;

(ii) the holder of the registered interest at the address shown on the interest at the land titles registry; and

(iii) the Saskatchewan Housing Corporation at its head office.

(9) A document mentioned in subsection (3) served by registered mail is deemed to have been received on the seventh day following the day of its mailing, unless the person to whom it was mailed establishes that, through no fault of the person, the person did not receive the document or received it at a later date.

**49**(1) Within 30 days of being served, a person on whom a copy of the amending instrument and notice is required to be served pursuant to subsection 48(3):

(a) may apply to the court to object to the scheme of apportionment included in the amending instrument; and

(b) shall file with the Director a notice of the application in a form acceptable to the Director.

(2) An applicant shall serve written notice of the application on the corporation.

(3) The corporation shall serve written notice of the application in the manner provided by subsections 48(8) and (9) on:

(a) all owners of units;

(b) all holders of registered interests based on mortgages mentioned in clause 48(3)(b); and

(c) the Saskatchewan Housing Corporation, if it was required to be served pursuant to clause 48(3)(c).

(4) If the corporation has received notice of an application pursuant to subsection (2), the corporation shall not amend and file bylaws to include the scheme of apportionment that is the subject of the application except in accordance with an order made pursuant to subsection (5).

(5) On an application, the court may:

(a) accept any evidence that the court considers appropriate; and

(b) make any order that the court considers appropriate, including an order amending the scheme of apportionment included in the amendment to the bylaws.

  

(Emphasis added)

**FACTS**

15 The respondent, Albony Place Condominium Corporation [Albony] is a condominium corporation continued pursuant to s. 34 of the *Act*. As the name implies, Albony is the condominium corporation that is responsible for the general operation of Albony Place, a condominium property in the Cathedral district of Regina. The condominium property consists of 11 units as well as associated common areas and facilities. As stipulated under s. 35 of the *Act*, Albony is responsible for the enforcement of its bylaws as well as the control, management and administration of the units, common property and common facilities of Albony Place.

16 There are a total of 10,000 unit factors at Albony Place. They are not apportioned equally. Units numbered 101, 201 and 301 each have 1024 unit factors. Units 102, 202 and 302 each have 995 unit factors. Units 103, 203 and 303 each have 873 unit factors. Units 204 and 304 each have 662 unit factors.

17 Historically, condominium fees at Albony Place had been assessed proportionately, based entirely on unit factor. At Albony's Annual General Meeting, held on April 6, 2016, a resolution was presented for the amendment of Albony's bylaws, to change the scheme to one in which certain common expenses would be apportioned equally to each unit and others would continue to be apportioned on the basis of unit factor.

18 As explained in the affidavit of Albony's president, the proponents of the amendment observed that the benefit from some common expense items was derived equally among the owners, while other common expense items were more likely to benefit owners of larger units. The latter items would continue to be assessed by unit factor while the former were to be assessed equally.

19 Albony's president presented the corporation's budget, which was based on the scheme of apportionment. According to this budget, the expense items to be apportioned by unit factor were: insurance, workers' compensation levies/ assessments, gas, water/sewer, cleaning services, exterior repairs and maintenance, plumbing repairs and maintenance, roof inspection repairs, salt expense and contributions to the capital fund. The expense items to be apportioned equally were: management fees, all administration expenses, bank charges, bulk electricity, all contract expenses (such as elevator maintenance, fire protection, caretaking, enterphones, equipment rental, recycling and waste disposal) and all of the other repair and maintenance expenses not earlier identified as apportioned by unit factor. In the end result, the proponents of the new apportionment scheme determined that, of the total budgeted expenses of $70,124.26, $31,142.47 would be apportioned by unit factor and $38,981.79 would be apportioned equally.

20 The court also received evidence of certain decisions and considerations that were made as to how the vote on the bylaw amendment would be conducted. Albony consulted with its counsel who, in turn, sought an interpretation from the Office of the Public Registry Administration [OPRA]. The requested interpretation was contained in an email message from the OPRA, and this interpretation informed the method by which the vote was conducted. The essential portion of the message reads as follows:

> Section 41 outlines how the voting rights of owners is calculated. All other sections as to the amounts of votes required have to be read in conjunction with section 41. Section 41 requires calculation of the number of votes each owner has in proportion to the unit factor. As noted in subsection 41(3), unless otherwise noted, all questions proposed for consideration of the owners at a meeting of owners is determined by a majority vote. The cases of scheme of apportionment and special resolution fall into the "unless otherwise noted category" which only changes that amount of votes that are required to pass the scheme/resolution and not how many vote each owner has.
>
> As such, the requirement in subsection 48 of the regulations requires 75% of the owners voting but section 41 indicates that the owners vote in proportion to their unit factors. The end result could be interpreted to be that 75% of the unit factors must consent when you combine the two requirements.

  

The use of persons in special resolutions is because that some special resolutions require the votes of both the owners and mortgage interest holders. It does not change the fact that it still has to be read in conjunction with the number of votes calculation required in section 41.

21 The vote was conducted on the basis of unit factor. At the meeting, owners, with a total of 7803 unit factors, voted for the amendment while owners, with a total of 2197 unit factors voted against the amendment. From the breakdown of unit factors, earlier mentioned, it is apparent that each of the two units with 662 unit factors voted against the amendment, and they were supported by one of the owners with 873 unit factors. The remaining owners all voted for the amendment. Based on unit factor, the amendment was supported by more than 75% of the total unit factors. Based on individual units, however, the amendment was supported by only 63.63% of the owners.

**POSITIONS OF THE PARTIES**

22 As earlier mentioned, the issue raised by this application is a complicated one, and the court would have benefited from written briefs presenting more detailed submissions on the proper interpretation to be given to the *Act* and the *Regulations*. Unfortunately, no such briefs were forthcoming. The applicants' argument rested largely on the proposition that the method by which the vote was conducted was oppressive and unfairly prejudicial to her clients, who held the minority unit factor positions in the context of the overall votes.

23 The argument presented on behalf of Albony was more specific to the *Act* and *Regulations*. Essentially, this argument relied exclusively on the interpretation given by the OPRA. As I understand that interpretation, it focuses on the proposition that a vote for a bylaw amendment, even when to be carried out by special resolution, must be conducted by unit factor. The fact that the definition of a special resolution employs the phrase "two-thirds of the persons" is of no consequence, and does not detract from the requirements set out in s. 41. On this basis, Albony submits that the vote was correctly conducted.

**ISSUE**

24 While the analysis in this case is somewhat complex, the sole issue to be decided can be more simply stated. In this respect, the sole issue to be determined is whether the vote for the bylaw amendment was to be conducted by unit factor or on the basis of one vote per owner.

**ANALYSIS**

25 In my view, the matter raised in this application can be decided solely on the interpretation of the *Act* and the *Regulations*. Specifically, it is not necessary for me to consider whether Albony's actions were oppressive or unfairly prejudicial to the interests of those owners whose units reflect lesser numbers of unit factors. In my view, the applicable provisions of the *Act* and *Regulations* address these concerns, expressly. My analysis in this respect follows.

26 There is no dispute that the assessment and collection of contributions toward common expenses is properly the subject of a condominium corporation's bylaws. Section 47(1)(i) recognizes this. Apart from this recognition, s. 57(1)(b) of the *Act* obliges a condominium corporation to determine owners' contributions to the common expenses fund by apportioning the amount required in accordance with the procedure prescribed by the *Regulations*.

27 Section 57(1)(b) brings into play s. 47 of the *Regulations*, which sets out the procedure prescribed for apportionment. In effect, it stipulates that there is one of two possible apportionment schemes available. The default apportionment scheme, described in s. 47(a) contemplates apportionment of common expense contributions solely on the basis of unit factor. An alternate apportionment scheme, as provided for in s. 47(b), is available only if it is established pursuant to ss. 48 and 49 of the *Regulations*.

28 Section 48 of the *Regulations* is noteworthy in that it sets out specific requirements for the establishment of an alternate apportionment scheme, one not in proportion to unit factors. Specifically, it requires a bylaw amendment

  

that sets out the alternate apportionment scheme. In addition, the provision requires written consent to the alternate apportionment scheme from at least 75% of the owners.

29 It is arguably significant that s. 48 of the *Regulations* does not reference a special resolution for the amendment of the bylaws, as required under s. 46(2) of the *Act*. The significance is particularly apparent when one observes that a special resolution, by definition, requires only a two thirds majority of persons entitled to exercise voting powers. As this clearly differs from the 75% written consent requirement in s. 48 of the *Regulations*, the difference raises a question about the essential validity of the specific regulation. Of course, this question is grounded by the principle of law that a statutory provision takes precedence over an inconsistent provision of the same statute's regulations. While that argument was not raised by Albony (as it could have been), I am satisfied that it should be addressed in this judgment, particularly since s. 48 factored heavily in the interpretation advanced by OPRA.

30 In my view, s. 48 of the *Regulations* is properly delegated legislation. While the bylaw amendment process it prescribes is different from that set out in s. 46(2), I am satisfied that the *Act* authorizes it as a special and complementary process for bylaw amendment on a particular matter. More simply stated, s. 48 of the *Regulations* simply imposes an additional requirement for bylaw amendments that purport to alter the apportionment scheme for contribution to common expenses.

31 In this regard, I find significance in the wording of ss. 47(1)(i), 57(1)(b) as well as ss. 112(j.1), (j.11) and (k). As worded, these provisions reflect the Legislature's view that the apportionment scheme for common expense contributions deserves special consideration, separate and apart from other bylaw matters. This view is particularly reflected in the fact that s. 57(1)(b) expressly provides for an apportionment scheme prescribed by the *Regulations*. From this understanding, s. 112(j.11) takes the issue one step further, by authorizing the making of regulations to prescribe processes for the creation, amendment or repeal of bylaws governing certain matters. In my view, s. 112(j.11) permits regulations that impose a higher standard for the creation, amendment or repeal of bylaws on particular matters, such as the apportionment of contributions. As long as the regulations do not provide for lesser standards in these respects, they are not inconsistent with the requirements of s. 46(2).

32 In my view, and taking all of these considerations together, the *Act* not only requires regulations to determine apportionment, it implicitly authorizes the Lieutenant Governor in Council to create a process to amend that determination. In this context, s. 48 of the *Regulations* is a valid result of that authority. Although not specifically addressed here, the same analysis also applies to s. 49 of the *Regulations*, which was made within the scope of the same authority.

33 Having found s. 48 of the *Regulations* to be valid and proper delegated legislation, I now turn to its application to the present case. In my view, and contrary to that expressed by OPRA, the application of s. 48 of the *Regulations* is not to be read in combination with the voting rights provisions in s. 41 of the *Act*. The process set out in s. 48 of the *Regulations* is completely different, and does not engage voting rights, *per se*. Indeed, it does not even contemplate a meeting. Rather, it simply "raises the bar" by requiring written consent from at least 75% of the owners. In this context, it is not reasonable to equate such consent to the voting contemplated in s. 41. In my view the wording of s. 41 neither assists nor informs the interpretation of s. 48 of the *Regulations*.

34 In the absence of a requirement that the consent of the owners is to be calculated by unit factor, I am satisfied that s. 48 of the *Regulations* requires the consent of the 75% of the registered owners, without regard to unit factor. In this instance, the court was not provided with evidence of written consent by anyone. Rather, Albony's position was premised on the view that the minutes of the meeting, which recorded the vote of more than 75% of the total unit factors, was sufficient. Aside from my conclusion that Albony wrongly relied on the unit factor calculation, I do not accept that the relied upon form of written consent is adequate.

**CONCLUSION**

  

35 In the result, the application is allowed. Albony's decision to amend the bylaw for the apportionment of contributions to the common expenses fund is quashed. The applicants are entitled to their taxable costs in respect of this application.

**End of Document**